HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 435/2005 (S/S)

Bhupendra Kumar

Vs

Cane Commissioner Uttaranchal Dehradun

Approved for reporting.

Not approved for reporting

Date of decision 24/2/2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 435 (S/S) OF 2005

Amendment Application No. 1598 of 2006

Bhupendra Kumar S/o Sri Sadhu Ram
R/o H.No. 57-58 Adarsh Colony,
Rudrapur District U.S. Nagar

.....Petitioner.

Versus

1. Cane Commissioner, Uttaranchal at Dehradun.
2. Deputy Cane Commissioner, Haldwani, Nainital.
3. District Cane Officer Haldwani, Nainital.

....Respondents.

24.02.2006

Sri S.S. Yadav, learned counsel for the petitioner.
Sri Nanak Chand Gupta, Learned standing counsel for the respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri S.S. Yadav, Learned Counsel for the petitioner and Learned Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 28.02.1997 & 15.03.1997 annexed as annexure 5 & 6 and further the petitioner has prayed for reinstatement alongwith salary and other consequential benefits.

Briefly stated the father of petitioner Late Sadhu Ram was posted at the post of Ganna Gram Sewak in the department of the respondent. Unfortunately on 05.09.1984, father of the petitioner died. Since the petitioner was minor and after attaining the age of this majority on 17.08.95 he preferred an application before the respondent No.2 for appointment on the post of Cane Supervisor on compassionate ground. On 11.07.1996, the petitioner was appointed on the post of Cane Supervisor. After some time his appointment was cancelled and ultimately service of the petitioner was terminated on 18.03.97.

Appointment letter shows to the following effect:-

आदेष

उपगन्ना आयुक्त (पर्व0क्षे0) हल्द्वानी (नैनीताल) के आदेष संख्या 546–49/स्था0 दिनांक 11.07.96 के द्ववारा श्री भूपेन्द्र सिंह पुत्र स्वर्गीय श्री साधुराम (ग्र0ग्रा0 सें0) को गन्ना पर्यवेक्षक के पद पर मृतक आश्रित के रूप में नियुक्ति प्रदान की गई है, जिसके अनुपालन में इनके द्ववारा सभी वांछित प्रमाण पत्रों के साथ अपनी उपस्थिति की सूचना आज दिनांक 15.7.96 के पूर्वान्ह में इस कार्यालय में प्रस्तुत की है।

श्री भूपेन्द्र सिंह गन्ना पर्यवेक्षक की नियुक्ति ज्येष्ट गन्ना विकास निरीक्षक, किच्छा (उधमसिंह नगर) के अधीन की जाती है कि ये अपनी उपस्थिति की सूचना तत्काल ज्येष्ठ गन्ना विकास निरीक्षक, किच्छा (उधमसिंह नगर) को प्रस्तुत करेगें।

Petitioner has submitted that the aforesaid letter does not show that the appointment is on temporary basis and sanction is awaited by the Government. However, the respondent No. 2 has passed an order terminating the service of the petitioner w.e.f. 18.03.1997.

The Standing Counsel has filed the counter affidavit. In paragraph 3 and 7 of the counter affidavit it has been stated as under:

"3. That the contents of para 1 of the writ petition is not admitted. It is submitted that the petitioner had also filed a writ petition No. 14439 of 1997 in the Hon'ble High Court of Judicature at Allahabad. The Hon'ble High Court directed the Secretary Cane and Sugar Industry, U.P. Lucknow to decide the representation made by the petitioner. As a consequence thereof the Secretary disposed of the representation of the petitioner vide order dated 25th November, 2000 and the same was rejected being passed by the time fixed i.e. 5 year. In this connection a true copy of the said order dated 25th November, 2000 is being filed herewith and marked as ***Annexure No. C.A.-1*** *to this affidavit.*

7. That the contents of paras 5 to 8 of the writ petition are not admitted. It is, however, submitted that the father of the petitioner died on 05.09.1984. The petitioner applied for appointment on 24.1.1995 the then Deputy Cane Commissioner, Haldwani (Nanital) in the expedition of the approved of the

Special Secretary, Cane and Sugar Anubhag-3 U.P. appointed the petitioner temporarily vide order dated 11.07.1996 but no approval was given on the application for appointment was delayed by more than 5 years and, therefore, the petitioner was terminated vide order dated 18.03.1997."

There is nothing in the appointment letter to show that the appointment of the petitioner was temporary or awaiting the approval of the Government. As it will appear from the order passed by the Special Secretary that the representation has been rejected on the ground that the petitioner has applied after five years and as such the representation of the petitioner was rejected. It appears that the State Government has passed the order dated 25.11.2000 disposing the representation of the petitioner which was pending.

Petitioner has further submitted that against the termination order, he approached to Hon'ble Allahabad High Court, Hon'ble court without going into the merit of the case directed the authorities to decide the representation regarding his termination but till date no order has been passed on the representation of the petitioner.

After creation of the State of Uttaranchal, the petitioner has made a representation before the authorities concerned.

Rule 3,4 & 5 of the U.P. Recruitment of Dependants of Government Servants Dying In Harness Rules 1974 are quoted below:

"Rule 3. ***Application of the rules*** *– These rules shall apply to recruitment of dependents of the deceased Government servants to public services and posts in connection with the affairs of State of Uttar Pradesh except services and posts which are within the purview of the Uttar Pradesh Public Service Commission.*

Rule 4. ***Overriding effect of these rules*** *– These rules and any orders issued thereunder shall, have effect notwithstanding anything to the contrary contained in any rules, regulations or orders in force at the commencement of these rules.*

Rule 5. "[Recruitment of a member of the family of the deceased]

(1) In case a Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government, one member of his family who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government shall on making an application for the purposes, be given a suitable employment in Government service on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, in relaxation of the normal recruitment rules if such person-

(i) fulfils the educational qualification prescribed for the post,

(ii) is otherwise qualified for Government service, and

(iii) makes the application for employment within five years from the date of the death of the Government servant;

Provided that where the State Government is satisfied that the time limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement, as it may consider necessary for dealing with the case in a just and equitable manner.

(2) As far a possible, such an employment should be given in the same department in which the deceased Government Servant was employed prior to his death."

(3) Each appointment under sub-rule(1) should be under the condition that the person appointed sub rule (1) shall upkeep those other family members of the deceased Government Servant who are incapable for their own maintenance and were dependent of the abovesaid deceased Government servant immediately before his death.]

As will appear from the aforesaid definitions that the appointment under the Dying in Harness rules once is made, it can not be said to be temporary.

As held by the Apex Court the Sushma Gusain that the appointment is being made in order to give relief to the family of the bread earner.

The Apex Court in the matter of Smt. Sushma Gosain and others versus Union of India and others; (1989) 4 Supreme Court Cases 468 has held as under:-

> "We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

In the case of Dhalla Ram vs. Union of India AIR 1999 SC 564, the Hon'ble Supreme Court has held as under:-

> *"The very object of making appointment on compassionate ground is to rehabilitate the family in distress of the*

deceased employee who dies in harness. There should be no difficulty to consider an eligible candidate for providing immediate sustenance to the members of the deceased employee. He had applied on July 15, 1987 and the application was rejected on July 14, 1988. He filed the O.A. on July 12, 1993. In view of the long delay, after the refusal by the Government, in filing the application, the same cannot be entertained. The appointment on compassionate grounds is not a method of recruitment but is a facility to provide for immediate rehabilitation to the family in distress for relieving the dependent family members of the deceased employee from destitution.''

High Court of Uttaranchal in [Special Appeal No. 32 of 2005], in State of Uttaranchal and others Vs. Chandan Singh has held as under:

"2. In our opinion, an appointment under the Dying in Harness Rules has to be treated as a permanent appointment otherwise if such appointment is treated to be a temporary appointment then it will follow that soon after the appointment the service can be terminated and this will nullify the very purpose of the Dying in Harness Rule because such appointment is intended to provide immediate relief to the family on the sudden death of the bread-earner. We, therefore, hold that the appointment under Dying in Harness Rule is a permanent appointment and not a temporary appointment and hence the provisions of U.P. Temporary Government Servant (Termination of Services) Rules, 1975 will not apply to such appointments."

In Haryana State Electricity Board Vs. Krishna Devi (2000)10 SCC 246 held as under:-

"Hence where at the time of death of a work charged employee of State Electricity Board there was no rule for such appointment, although such a scheme was framed about one

year later, and the application seeking compassionate appointment of the deceased's son was made still seven long years later, held High Court erred in directing the Board to give employment to the deceased's son."

In Smt. Manisha Chand Vs.District Magistrate, Pithoragarh and another (2004)1 U.D. 156 held as under:

"Rule 5, U.P. Recruitment of Dependents of Government Servant Dying in Harness Rules, 1974 – The law is well settled that even a daily wager is entitled for the benefit of the rules under Dying-in-Harness and therefore on the same analogy the Seasonal Collection Amins cannot be deprived from the said benefit."

In view of the aforesaid facts and circumstances, once the petitioner was given the appointment on 11.07.1996 under Dying in Harness Rules, it was not open for the respondents to revoke the same as to pass any other order dispensing with the service of the petitioner as the appointment under Dying in Harness Rules is always treated to be a regular appointment.

Consequently, a writ or certiorari is issued quashing the order dated 28.02.1997, 18.03.1997 and 25.11.2000 passed by the respondents. A writ or mandamus is issued directing the respondents to reinstate the petitioner by passing appropriate order. However, he shall not be paid dues the for period for which he did not work.

The writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

24.02.2006
Jain